

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2205.

764

No. 10, SPECIAL CALENDAR.

GEORGE L. BROWN, APPELLANT,

vs.

UNITED STATES OF AMERICA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 13, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2205.

GEORGE L. BROWN, Appellant,
vs.
UNITED STATES OF AMERICA.

a Supreme Court of the District of Columbia.

Criminal. No. 26741.

UNITED STATES
vs.
GEORGE L. BROWN.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 *Indictment.*

Filed in Open Court January 3, 1910. J. R. Young, Clerk.

Holding a Criminal Term.

October Term, A. D. 1909.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one George L. Brown, late of the District aforesaid, one the twelfth day of January, in the year of our Lord one thousand nine hundred and nine, with force and arms, at the District aforesaid, one star shaped brooch, of the value of two hundred dollars, one finger ring, set with a solitaire diamond, of the value of four hundred dollars; one other finger ring, set with a solitaire diamond, of the value of two hundred dollars; one other finger ring, set with a diamond and emerald, of the value of two hundred dollars, of the goods,

chattels and property of the Southern Railway Company, a body corporate, then and there being and in its possession found, feloniously did steal, take and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second Count.

The Grand Jurors aforesaid, upon their oath aforesaid, do further present:

2 That the said George L. Brown, on the fifteenth day of January, in the year of our Lord one thousand nine hundred and nine, with force and arms, at the District aforesaid, one gold bracelet, set with a diamond and two rubies, of the value of forty-five dollars, of the goods, chattels and property of the Southern Railway Company, a body corporate, then and there being and in its possession found, feloniously did steal, take and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said George L. Brown, on the sixth day of November in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, one diamond shirt stud, of the value of three hundred dollars; three hunting case watch cases, with diamond in the back of each, each case of the value of ninety dollars; one lady's hunting case watch case, of the value of fifty-five dollars; six *six* loose diamonds, each of the value of fifty dollars, of the goods, chattels and property of the Southern Railway Company, a body corporate, then and there being and in its possession found, feloniously did steal, take and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

3

Fourth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said George L. Brown, on the twentieth day of January, in the year of our Lord one thousand nine hundred and nine, with force and arms, and at the District aforesaid, one gold stick pin with pearl, of the value of ten dollars; one gold stick pin with three small diamond chips, of the value of fifteen dollars; two finger rings, set with an opal, each of the value of seventy-five dollars; one finger ring, set with solitaire diamond of the value of three hundred and fifty dollars; one other finger ring, set with sapphires and diamonds, of the value of two hundred dollars; one loose pearl of the value of two hundred dollars; one leaf shaped brooch, set with diamonds, of the value of fifty dollars; one other finger ring, set with moon stones, surrounded by small diamonds, of the value of forty dollars; one

pansy leaf pin, small diamond in center, of the value of ten dollars; one pair of earrings, set with diamonds, of the value of one hundred and fifty dollars; one other finger ring, set with two small diamonds, of the value of fifteen dollars; one other finger ring, set with doli-taire diamond, of the value of four hundred dollars; one leaf pin, set with three small diamonds, of the value of five dollars; one rope chain, of the value of twenty-five dollars; one scarf pin, with pearl in the center of the value of ten dollars; one gold bracelet, double wire design, of the value of fifty dollars; one watch chain, of the
4 value of thirty-five dollars; one link design net chain, of the value of twenty dollars; one hunting case gold watch, case number eight thousand two hundred and ninety-three, of the value of twenty-five dollars; eleven red stones, two pearls, and one diamond chip, all of the value of sixty dollars; three gold lockets, one diamond in each, each locket of the value of twenty-five dollars, of the goods, chattels and property of the Southern Railway Company, a body corporate, then and there being and in its possession found, feloniously did steal, take and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

DANIEL W. BAKER,
*Attorney of the United States in
and for the District of Columbia.*

(Endorsed:) No. 26741. United States vs. George L. Brown. Larceny. Witnesses: Albert V. Huyler, Samuel H. Meek, Amatia Steen, Mrs. T. H. Walker, Henry T. B. Moye, J. H. Connoly, H. M. Duncan, Mamie L. Whitlock, Winifred Whitlock, Patrick O'Brien, M. P., Frank Bauer, M. P., Edward B. Hesse. A true bill, Sewell A. Reeves, Foreman.

5

Arraignment.

Supreme Court of the District of Columbia.

MONDAY, *January 17th*, A. D. 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Come as well the Attorney of the United States as the defendant in proper person, according to his recognizance, and by his attorney Campbell Carrington, Esquire; and thereupon the defendant being arraigned upon the indictment pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Verdict.

Supreme Court of the District of Columbia.

WEDNESDAY, *March 16th*, A. D. 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Come as well the Attorney of the United States as the defendant in proper person, according to his recognizance, and by his Attorneys Campbell Carrington and John Ridout, Esquires; whereupon comes a jury of good and lawful men of the District of Columbia, to wit: 1. Andrew J. Hobson, 2. James Linsky, 3. Sameul H. King, 4. Clarence O. Kraft, 5. William H. Casler, 6. John P. Hawkins, 7. Arthur Burt, 8. John W. Farran, 9. Julius M. Schneider, 10. John R. Bussard, 11. Charles S. Hilbert and 12. Oscar F. Vinson, who being sworn well and truly to try the issue joined herein upon their oath say that the said defendant is guilty in manner and form as charged in the indictment in this case; whereupon the said defendant by his said attorneys gives notice of his intention to file a motion for a new trial.

Sentence, Appeal, &c.

Supreme Court of the District of Columbia.

FRIDAY, *April 15th*, A. D. 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Come as well the Attorney of the United States as the defendant, in proper person, according to his recognizance, and by his Attorney Campbell Carrington, Esquire, and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said, whereupon it is considered by the Court that for his said offense the defendant be taken by the Warden of the United States Jail in and for the District of Columbia to said jail, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of Three (3) years, to take effect from and including the date of his, the said defendant's arrival at the said Penitentiary.

Thereupon the said defendant notes an appeal to the Court of Appeals of the District of Columbia from the foregoing judgment, and, thereupon, on motion of said defendant the penalty of the bond for costs on said appeal is fixed in the sum of One hundred (100) Dollars; whereupon the Attorney of the United States in open court waives the issuance of a writ of citation.

Memoranda.

1910.

May 3.—Appeal bond \$100. approved & filed.

May 27.—Bill of Exceptions submitted to the Court.

June 15.—Time to file transcript extended to and inc. July 25/10.

Bill of Exceptions Made Part of Record.

Supreme Court of the District of Columbia.

FRIDAY, July 8th, A. D. 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

The Court signs the bill of exceptions taken herein and heretofore submitted to the Court and now orders the same of record as of the time when such exceptions were noted at the trial of this case.

8

Bill of Exceptions.

Filed Jul- 8, 1910.

* * * * *

Be it remembered, that at the trial of this cause, before Mr. Justice Gould and a Jury on the 16th day of March 1910, the Government to prove the issues on its part joined, gave evidence by the witnesses hereinafter named tending to prove what is hereinafter set forth:

SAMUEL H. MEEK:

That on January 12th, 1909, he took a Southern Railway train at Corinth, Miss., that he had a trunk in which was a bracelet, that the bracelet shown him was the one referred to: His trunk was received by him in the District of Columbia, and the bracelet was not in the trunk, when he received it, he next saw the bracelet at Police Headquarters at the City of Washington, in said District. The trunk was originally checked at Columbus, Miss. and changed at Corinth. He did not see the trunk from the time it was checked until he received it in Washington, from a baggage wagon. The bracelet is his property.

WILLIAM B. SMITHERS:

That on June 12th and 16th 1909, he was Conductor on a Southern Railroad train, No. 42, from Chattanooga, Tenn. to Washington, over the Norfolk, and Western and Southern Railroad tracks. He took the train from Norfolk and Western Road at Lynchburg, Virginia. Defendant was baggage master from Lynchburg, to Washington and the baggage was in his custody, the distance from Lynchburg to Washington, is one hundred and seventy-four miles.

9

Thereupon the witness upon cross-examination was asked the following questions:

How long would it take that train, or did it take that train you were on, on the 12th and 16th of January 1909, to run from the middle of long bridge to the Union Station? To which question, counsel for the government objected, which objection was sustained by the court, and the question was not allowed to be answered.

To which ruling counsel for the defendant excepted.

JOHN E. VALK:

That on November 6th, 1909, he was salesman for a New York jewelry house, on that day he checked his trunk from Greensboro, North Carolina, to Roanoke, Virginia on the Southern Railway, and saw his trunk placed in the baggage Car at Greensboro, and saw the trunk changed at Lynchburg, to the Norfolk and Western Baggage car. The trunk contained jewelry, watch cases, diamonds and rings worth about thirty-five thousand dollars. He examined the trunk at Greensboro, and all the jewelry was then in it. After reaching Roanoke, he found on examining the trunk there, on the next morning, that valuable jewelry consisting of diamonds and gold watch cases was missing, and he identified a watch case, which he testified was worth ninety dollars, he also identified certain loose diamonds. First saw the watch case, after seeing it at Greensboro, at Police Headquarters, in the City of Washington, and at the trial.

WILLIAM L. WARD:

That he is a member of the firm of N. H. White & Company, jewelers, of New York, and is in charge of the diamond department of said business, he identified the diamonds which had been identified by the witness Valk, and valued them at more than five
10 hundred dollars.

AMATIA STEEN:

That Jan. 12th 1909, she was traveling from Chattanooga, to Washington, she had two trunks, checked from Vicksburg, Mississippi, in one of the trunks was a pin and some rings, when she received the trunk at School at Chevy Chase, Maryland, she missed the pin and four rings, which she now identifies and which she values at over two hundred and fifty dollars.

JOHN H. CONNOLLY:

That he is a special agent of the Southern Railway Company. He knows Brown who was a baggage master on the Southern Railway Company in January and November 1909, and was Baggage-master on train 42, January 16th, 1909.

He had several talks with Brown when he was under arrest at Police Headquarters, in Washington, when several police officers were also present and some of them talking to Brown. That no threats were made, nor inducements offered to Brown.

Whereupon counsel for the government, asked the following question: during this first interview what did Mr. Brown say to you?

To which question counsel objected on the ground that when the interview occurred, as shown by the testimony, defendant was at Police Headquarters, surrounded by six police officers, and that any statement he made was not a voluntary and free statement, but the Court overruled the objection to which ruling, counsel for the defendant excepted.

11 Thereupon the witness answered that Brown wanted to tell what he had done with the jewelry, he had taken—that he had sold twenty-five loose diamonds to a Mr. Abrahams, in Washington, a day or two before his arrest. Brown said he had taken some of them from Valk's trunk, and others at different times from other trunks—Brown also said he had taken the bracelet identified by the witness Meeks from a trunk and that he gave it to a Miss Whitlock in Washington. Brown said he took the pin, identified by the witness Steen, and brought that to Washington. Brown surrendered some watch cases as taken from the Valk trunk and stated where he had taken them. And that he brought them to Washington. Brown further made an affidavit. Before he did so, no inducement was held out, nor promises nor threats made to him. The affidavit was given in evidence and reads as follows:—

DISTRICT OF COLUMBIA,
City of Washington:

On this 23d day of November, 1909, personally appeared before me, Pearce Horne, a Notary Public for the District of Columbia, the undersigned George L. Brown, who being by me first duly sworn, deposes and says: I was a baggagemaster in the employment of the Southern Railway Company, and while such employee and in such employment, I extracted from trunks in my possession certain articles a list of which is attached to this affidavit, identified by my signature, and made a part hereof; that the said articles so listed
12 are the articles which were taken from the trunks by me while — were in my charge, and are the articles which are now in the possession of Mr. Edwin B. Hesse, Chief Clerk of the Metropolitan Police Department of the City of Washington, as the same were examined and identified by me on this date in the presence of Mr. Hesse and Mr. J. W. Connelly and Mr. H. O'B. Cooper of the Southern Railway Company. And further affiant saith naught.

GEORGE L. BROWN.

Sworn to and subscribed before me this 23d November, 1909.

[SEAL.]

PEARCE HORNE,
Notary Public.

To said affidavit was appended a list showing many articles of jewelry including those given in evidence in this cause.

ABE ABRAHAM:

That he is in the jewelry business and purchased the loose diamonds given in evidence Nov. 8th 1909, from the defendant in the City of Washington, District of Columbia.

MAMIE L. WHITLOCK:

That the bracelet given in evidence and identified by Meeks, is hers, having been given to her by the defendant, Christmas, 1908. The pin identified by Miss Steen was given to witness by defendant in this City.

H. M. DUNCAN:

That he is a special agent of the Southern Railroad Company, that the next morning after defendant's last trip to Charlotte, North Carolina, witness searched defendant's grip and found fifty-two trunk keys, one bunch of keys, was identified by witness and given in evidence.

13 PATRICK F. O'BRIEN:

That he is a Police Officer, and took part in the arrest of the defendant November 1st, 1909, after the arrest, and while at Police Headquarters, defendant said he had taken the bracelet, and breast-pin given in evidence, that he had given them to Miss Whitlock, defendant also said that he had taken diamonds from the N. H. White trunk, and pawned them at Abraham's. Defendant also turned over some watch cases, taken from trunk of Valk.

Thereupon the government rested.

Thereupon counsel for the defendant moved the Court to instruct the jury that there was no evidence in the case legally sufficient to justify the conviction of the defendant in any count in the indictment, on the following grounds:

I.

That the authority claimed by the United States to prosecute the defendant under the indictment herein under all the evidence in this case does not exist, because the indictment herein tested by the evidence, violates the following provisions of the Constitution of the United States and each of them. *a*—Article 3, Section 2, which among other things provides, "and such trial shall be held in the State, where the crime shall have been committed."

Article 5, of the Amendment to the Constitution, which among other things provides as follows:

"No person shall be deprived of life, liberty or property without due process of law."

Article 6 of said Amendment which among other things
14 provides as follows:—

"In all Criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury, of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation."

II.

That there is a fatal variance between the allegation and the proof in that the allegation is of a larcenious taking in the District of Columbia, while all the evidence tends to show a taking either in

North Carolina or Virginia, and merely the bringing of the goods into the District of Columbia.

III.

That there is no competent even prima facie evidence of the Corpus delicti.

IV.

That there is no competent even prima facie evidence of ownership, and that there is a further fatal variance between the allegations and the proof as to ownership in this: that the indictment unqualifiedly avers ownership in the Southern Railway Company, while all the proof tends to show at most a special property as bailee for carriage.

V.

That under all the evidence, the crime if any committed, is embezzlement by an agent as defined by Section 834 of the Code.

15

VI.

That the definition of Grand Larceny in North Carolina differs materially from the definition thereof in Section 826 of the Code.

In North Carolina:

"All distinction between petit and grand larceny, where the same hath had the benefit of clergy is abolished, and the offense of felonious stealing, where no other punishment shall be specifically prescribed therefor by statute, shall be punished as petit larceny is, provided that in cases of much aggravation of hardened offenders the Court may in its discretion sentence the offender to the States Prison, for a period not exceeding ten years.

Revisal of 1908, Sec. 350, "Crimes."

VII.

That the definition of Grand Larceny in Virginia differs materially from the definition thereof in said Section 826 of the Code.

Larceny in Virginia is thus defined:

"If any person steal from the person of another money or other thing of value, of five dollars he shall be deemed guilty of grand larceny, and be confined in the Penitentiary not less than one nor more than ten years.

16

If any person commit simple larceny, not from the person of another of goods and chattels, he shall, if they are of the value of fifty dollars or more, be deemed guilty of grand larceny, and be confined in the Penitentiary not less than five nor more than ten years."

Virginia Code 1904, Section 3707.

But the Court refused to so instruct the Jury to which ruling and refusal the defendant by his counsel excepted.

Thereupon the Court of his own motion charged the Jury as follows:

GENTLEMEN OF THE JURY: The defendant, George L. Brown stands before you indicted for the crime of Grand Larceny. The indictment contains four counts. The different counts of the indictment charge separate larceny of the specified articles of jewelry. Now it is unnecessary for me to read to you the different charges. I might take the first count as a sample count; that on the 12th day of January, 1909, with force of arms, at the District of Columbia aforesaid, one star shaped brooch of the value of \$200, one finger ring set with a solitaire diamond of the value of \$200, one other finger ring set with a diamond and emerald of the value of \$200, of the goods, chattels and property of the Southern Railway Company, a body corporate, then and there being in its possession found, etc.

17 In other words, that is the count based upon the testimony of the young girl, Miss Steen, who identified the brooch, and also testified as to certain articles of jewelry which she had in her trunk when she came from her home in the south, *at* attend the school at Chevy Chase. The other counts set up other articles of jewelry of valuation exceeding 35.00 in each count.

Now if you find from the evidence and are satisfied beyond a reasonable doubt that this defendant took the articles that are named in any one or all of the counts of the indictment with the intent of appropriating them to his own use, then you will find him guilty as indicted. Now often in your presence have been discussed many legal questions that need not worry you very much. I have already ruled that if the property was brought into the District of Columbia by Brown in his custody and he appropriated the property here, he is guilty as indicted. The thing for you to find is, whether this defendant having that property in his custody or any part of it, amounting to over \$35.00 in each count, feloniously took this with the intention of depriving the owner thereof, then he is guilty as indicted if you have any reasonable doubt as to the value of the property, in any count of the indictment, then you can give him the benefit of the doubt.

To so much of said charge as instructs the Jury, that if the property given in evidence, was brought into the District of Columbia, by Brown, in his custody, as Baggage master, and if he ap-
18 propriated the property to his use in said District, he is guilty as indicted, without regard to the place where the defendant first took the property into his possession. Counsel for the defendant objected and excepted. But the Court adhered to his charge as given, and did not in any wise modify the same.

The foregoing is the substance of all the evidence in the case.

All the aforesaid exceptions were separately reserved and taken during the trial of said cause, and were separately noted by the Justice presiding upon his minutes, before the jury retired to consider of their verdict.

And thereafter the jury returned into Court and rendered a verdict that the defendant was guilty as indicted.

And the defendant now prays the Court to settle and sign this Bill of Exceptions, now for then, in order that the same may be

made part of the record in this case, which is accordingly done on this 8th day of July, A. D. 1910 now for then.

ASHLEY M. GOULD, *Justice.*

Memorandum.

1810, July 12.—Time to file transcript extended further to and including August 15, 1910.

19 *Directions to Clerk for Preparation of Transcript of Record.*

Filed July 13, 1910.

The Clerk will please include in the transcript of record on appeal herein the following: Indictment; Plea; Verdict; Judgment; Appeal; Appeal bond; Bill of Exceptions; Extension of time to file transcript.

CAMPBELL CARRINGTON, .
JOHN RIDOUT,
Attorneys for Def't.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26741 Criminal, entitled United States vs. George L. Brown, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 5th day of August, 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By ALF. G. BUHRMAN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2205. George L. Brown, appellant, vs. United States of America. Court of Appeals, District of Columbia. Filed Aug. 13, 1910. Henry W. Hodges, clerk.